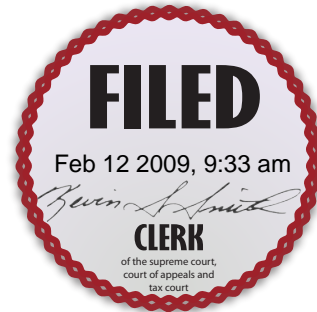


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF W.M.,

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CHILD IN NEED OF SERVICES,

)

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H.M.,

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)

Appellant-Respondent,

)

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vs.

)

No. 49A02-0805-JV-458

)

MARION COUNTY DEPARTMENT
OF CHILD SERVICES,

)

)

)

Appellee-Petitioner.

)

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Marilyn A. Moores, Judge

The Honorable Scott Stowers, Magistrate

Cause No. 49D09-0707-JC-030612

February 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

H.M. (“Mother”) appeals the juvenile court’s dispositional order in the adjudication of W.M. as a child in need of services (“CHINS”). Mother raises the following restated issue for our review: whether there is sufficient evidence to support the juvenile court’s finding that W.M. was a CHINS as to Mother.

We affirm.

FACTS AND PROCEDURAL HISTORY

W.M. was born on June 2, 2007, to Mother and D.C. (“Father”). W.M.’s parents lived in separate homes on the same cul-de-sac. On July 23, 2007, Officer Brendon Smith of the Indianapolis Metropolitan Police Department was dispatched to Father’s home for a child welfare check reported by Father’s mother. When Officer Smith arrived, Father was sitting on the couch holding W.M., and Mother was asleep in the back bedroom.

Officer Smith spoke with Mother, whose speech was slurred, who staggered, and who smelled of alcohol. Mother told Officer Smith that there had been a two-hour period earlier in the day where she had been drinking while she was the only one caring for W.M. Mother admitted to consuming a pint of vodka while taking care of W.M. She also indicated that she was feeling very sad and depressed.

Officer Smith arrested Mother for disorderly conduct, criminal recklessness, and neglect of a dependent, and sent her to Wishard Hospital Detention for a psychiatric evaluation. Father told Officer Smith that neither he nor his mother could care for W.M. Officer Smith then contacted the Marion County Department of Child Services (“DCS”), who took custody of W.M.

A Family Case Manager (“FCM”) arrived at the scene and spoke with Mother. Mother admitted that she had been feeling stressed out and overwhelmed by being a single parent and admitted to her history of alcohol abuse and addiction. Mother admitted that she drank approximately a pint of vodka that day while she was the only one caring for W.M. She also admitted to alcohol consumption while she was pregnant with W.M. In 2004, DCS became involved in a case involving Mother’s now four and one-half-year-old child because Mother had been binge drinking while taking care of that child, who was an infant at the time of that investigation. Mother entered an Agreed Entry as to that child.

Mother was held for three days after being arrested in the current matter, but was not charged with any offense. However, Mother was charged with a probation violation in Hendricks County for her alcohol consumption and was incarcerated there for one hundred and ten days.

DCS filed a CHINS petition on July 25, 2007, alleging that W.M. was a CHINS as to Mother. Prior to the fact-finding hearing, Father submitted an Agreed Entry that W.M. was a CHINS as to Father. The juvenile court issued a written entry of the fact-finding hearing noting that the court had reviewed reports and information from DCS, service providers, and other sources, which the court incorporated into the order. The court also mentioned in the entry that the court took judicial notice of its own file. Mother filed a motion to correct error arguing that the court’s file included reports and information from DCS and other sources that were not admitted as evidence at the fact-finding hearing.

Ultimately, the juvenile court issued its findings of fact and conclusions thereon finding the CHINS petition true as to Mother and determining that W.M. was a CHINS. The court denied Mother's motion to correct error. At the disposition hearing, the court incorporated the pre-dispositional report and ordered Mother to participate in certain services, during which W.M. was to remain in foster care. Mother now appeals.

DISCUSSION AND DECISION

Mother argues that the evidence does not support the juvenile court's findings of fact and the findings do not support the court's conclusions thereon. When we review a case in which a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court's findings or judgment unless they are clearly erroneous. Ind. Trial Rule 52(A); *In re C.S.*, 863 N.E.2d 413, 417 (Ind. Ct. App. 2007). We engage in a two-tiered standard of review, considering first whether the evidence supports the findings and then whether the findings support the judgment. *In re C.S.*, 863 N.E.2d at 417. Findings are clearly erroneous only when a review of the record leaves us firmly convinced that a mistake has been made. *Id.* A judgment is clearly erroneous when the findings of fact and conclusions thereon do not support it. *Id.* In applying this standard, we neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. *Id.* Ind. Code section 31-34-23-4 provides that any finding by a juvenile court must be based on a preponderance of the evidence.

Mother specifically challenges the juvenile court's findings #21 and #32. Those findings are as follows:

21. The child had an upper respiratory infection. However, [M]other was unable to transport the child to a medical facility due to her drinking.

Appellant's App. at 108.

32. Mother was arrested for several charges, but “medical neglect” was the only charge that was formally filed.

Id.

Mother argues that “[t]here simply is no evidence that W.M. had an upper respiratory infection.” *Appellant's Br.* at 6. However, Mother acknowledges that Officer Smith testified that Mother told him she had not taken W.M. to Med Check because she did not want to lose her visitation rights with her four-year-old if her drinking were discovered. Officer Smith also testified that the medics on the scene who examined W.M. told Officer Smith that W.M. had an upper respiratory infection. Mother points to the examining physician’s diagnosis, the day after W.M. was taken into custody, that W.M. was healthy.

Mother’s argument is an invitation for us to reweigh the evidence. As Mother acknowledges, there was evidence in the record that the medics believed that W.M. had an upper respiratory infection, and that Mother believed that her drinking would be discovered if she took W.M. to Med Check, thus jeopardizing her visitation with her four-year-old. That belief pre-supposes that Mother believed that W.M. might need medical attention. We find that the evidence was sufficient to support the juvenile court’s finding and decline Mother’s invitation to reweigh the evidence.

Assuming, *arguendo*, that the juvenile court erred by finding that medical neglect was the only charge formally filed against Mother, there is ample evidence to support the juvenile

court's finding that W.M. was CHINS as to Mother. Although medical neglect charges may not have been filed against Mother, Mother was arrested for and was incarcerated for one hundred ten days on a probation violation out of Hendricks County resulting from her consumption of alcohol on the date W.M. was removed from Mother's care.

Mother argues that the juvenile court's conclusions that W.M. is a CHINS as to Mother are not supported by the findings of fact or the evidence. Ind. Code section 31-34-1-1 provides that a child is a CHINS if, before that child becomes eighteen years old, the child's mental or physical condition is seriously impaired or endangered as a result of the inability, refusal, or neglect of the child's parent to supply the child with the necessary food, clothing, shelter, medical care, education, or supervision, and the child needs care, treatment, or rehabilitation the child is not receiving or is unlikely to be provided without the coercive intervention of the court.

The juvenile court's findings and conclusions that W.M. was a victim of neglect and endangered were supported by the evidence that Mother was intoxicated while the only caregiver for W.M., a six-week-old infant, and that Mother had a history of abusing alcohol. Mother was intoxicated at the time of the welfare check on W.M., and Mother admitted that her alcohol binges last for several days at a time.

The evidence in this matter establishes by a preponderance of the evidence that Mother has a longstanding problem with her alcohol addiction, which threatens the safety of her children. The fact that W.M., who was six weeks old at the time of the investigation, did not suffer actual injury as a result of Mother's inability to care for the child, does not detract

from the juvenile court's conclusion that W.M. was a CHINS as to Mother. We conclude that sufficient evidence supported the juvenile court's finding that W.M. was CHINS as to Mother.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.